

1 WARREN J. RHEAUME (admitted *pro hac vice*)
HELLER EHRMAN LLP
2 701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7098
3 Telephone: (206) 447-0900
Facsimile: (206) 447-0849
4 Email: Warren.Rheaume@hellerehrman.com

5 LESLIE N. HARVEY, State Bar No. 241203
HELLER EHRMAN LLP
6 333 Bush Street
San Francisco, California 94104-2878
7 Telephone: (415) 772-6000
Facsimile: (415) 772-6268
8 Email: Leslie.Harvey@hellerehrman.com

9 Attorneys for Defendant
MICROSOFT CORPORATION

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 LAURIE MARIE LASKEY,
14 Plaintiff,
15 v.
16 MICROSOFT CORPORATION, and DOES 1
through 1000, inclusive,
17 Defendants.

Case No. CV-08-1465-WHA

**REPLY IN SUPPORT OF
MICROSOFT'S MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, SECOND
MOTION FOR A MORE
DEFINITE STATEMENT;**

Date: September 4, 2008
Time: 8:00 a.m.
Courtroom: 9, 19th floor
Judge: William H. Alsup

1 Plaintiff has utterly failed to address the merits or substance of Microsoft's Motion to
2 Dismiss. The basis of this motion is that the case must be dismissed because there is not an
3 operative complaint on file. The Court granted Microsoft's Motion for a More Definite
4 Statement on June 10, 2008, but Plaintiff did not file an amended complaint within the
5 required time period under Federal Rule of Civil Procedure 12(e). In her opposition to this
6 Motion to Dismiss, Plaintiff does not attempt to justify her failure to comply with the
7 procedural mandates of this Court. Accordingly, this action should be dismissed.

8 Furthermore, Plaintiff does not explain to the Court how the various procedural and
9 substantive flaws in her case could be cured by another opportunity to amend. Microsoft's
10 Motion to Dismiss is also based upon the fact that Plaintiff's causes of action, even if
11 properly asserted, are all barred by applicable statutes of limitations. Plaintiff has
12 completely failed to address the statute of limitations problem in her opposition to this
13 motion.

14 Instead, Plaintiff focuses her opposition on an untrue and unfounded assertion that
15 Microsoft has somehow admitted liability. Even if this assertion was true, it would be
16 irrelevant in determining this motion to dismiss, which depends solely on whether the
17 *Plaintiff* has properly stated a claim.¹ But this assertion is also completely untrue;
18 Microsoft has never suggested or admitted that it is liable for any alleged injuries to
19 Plaintiff. Microsoft has always maintained that Plaintiff's claims are wholly without merit
20 and has vigorously disputed liability.

21 Plaintiff's reasoning appears to be based upon her erroneous interpretation of
22 Microsoft's initial disclosures, in which Microsoft makes reference to a Microsoft product
23 called ICW5 (Microsoft's Internet Connection Wizard 5.0). Plaintiff asserts that because
24 Microsoft "disclosed" that ICW5 is a Microsoft product, Microsoft has somehow admitted
25 that it is responsible for products liability in this case. Nothing could be further from the
26 truth.

27 ¹ Plaintiff has also indicated that she needs to take additional discovery, but this
28 request is similarly irrelevant to the instant motion.

1 In its initial disclosures, Microsoft simply identified documents relating to ICW5 as
2 potentially relevant to this litigation. *See* Harvey Decl., Ex. 1, Microsoft's Initial
3 Disclosures at p. 3:12-14. It did so *solely* because Plaintiff indicated in other filings with
4 the Court that she believed there was a problem with ICW5 on her computer. *See* Dkt. #38.
5 Consequently, documents describing what ICW5 is and how it works could constitute
6 potentially relevant evidence that Microsoft "may use to support its claims or defenses."
7 Fed. R. Civ. Proc. 26 (a)(1)(A)(ii). Microsoft is required to disclose such documents under
8 Federal Rule of Civil Procedure 26(a). Admitting that documents describing ICW5 could
9 constitute relevant evidence in this case, however, does not amount to an admission that
10 ICW5 was defective or that ICW5 caused injury to Plaintiff. Plaintiff is asking this Court to
11 make an astonishing logical leap with absolutely no support for her assertions. Her
12 interpretation can only be based on a fundamental misunderstanding of what Rule 26(a)
13 initial disclosures are.

14 For the reasons set forth above and also in Microsoft's opening memorandum, the
15 Court should grant Microsoft's motion to dismiss this action in its entirety with prejudice.

16
17
18 Dated: August 18, 2008

Respectfully submitted by,
HELLER EHRMAN LLP

19
20 By: /s/ Leslie N. Harvey
21 LESLIE N. HARVEY
22 Attorneys for Defendant
23 MICROSOFT CORPORATION
24
25
26
27
28